

REMARKS

Applicant submits this Response to the Office Action mailed June 22, 2005.

First, with respect to the comment by the Examiner regarding the specification, applicant is not aware of any error in the specification. Applicant will seek correction of any errors which it may become aware of.

Next, the Office Action has rejected the claims as being indefinite in connection with the use of the terms "small" and "large" in relation to the openings of the claimed package. Claim 26 has been amended in order to more clearly state in relative terms the size of the openings of the claimed combustible package.

Claim 26 has also been rejected under 35 U.S.C. § 112 on the basis that is it not clear if combustible material is actually inside of the package. Applicant respectfully disagrees with the Examiner. Claim 26 includes the specific limitation "combustible material placed inside the package". As is evident from this explicit language, there is a package and combustible material is inside the package. Applicant submits that no further clarification or amendment of the claims is required.

Applicant has canceled Claims 1-25 without prejudice in order to obtain prompt issuance of the remaining claims. Applicant respectfully disagrees with

the basis for rejection of Claims 1-25; however, Applicant is focusing now only on the remaining claims for business reasons.

Claim 26 has been rejected as being anticipated by the WO' 770 reference. The rejection is apparently based specifically on the disclosure of the Abstract of the WO'770 reference. For one or more of the following reasons, Applicant respectfully disagrees with the conclusions of the Examiner.

Applicant believes that there is no disclosure in the WO'770 reference of both a package and a combustible material inside the package. Applicant believes there is no disclosure in the WO'770 reference of any packaging at all. Instead, there is only disclosure of a ventilated, flammable structure. There are no components in the WO'770 device that constitute a package. There is no package into which is placed a combustible material. Therefore, for at least this reason, Applicant submits that the anticipation rejection of Claim 26 is traversed.

Likewise, Applicant cannot identify any disclosure or teaching in the WO'770 reference of the structure claimed in Claims 27, 28 and 36 which are directed to various package features. There is simply no package in the WO'770 reference, therefore, there are none of the dependent limitations that are further disclosed or taught by that reference.

In addition to the foregoing, Claim 35 has been rejected as being obvious in view of the WO'770 reference. Claim 35 is directed to a particular range of package dimensions. Applicant submits that there is no teaching or any

suggestion in the WO'770 reference of the size limitations as contained in Claim 35. Applicant submits that the only way that those size limitations may be considered obvious is through the use of impermissible hindsight. The size of the combustible package of the claimed invention is very relevant in terms of being a commercially acceptable product, for instance, for purposes of use in a home grill. The prior art device described in the WO'770 reference does not perform the same function as the combustible package product of Claim 35. Therefore, the size limitations are significant and relevant. For at least the foregoing reasons, Applicant submits that the obviousness rejection is traversed.

Alternatively and in addition to the foregoing arguments, Applicant submits that there is objective indicia of non-obviousness of the present invention that support patentability of the pending claims 26-37. As noted in the attached Declaration of Michael W. Stephens, inventor of the present invention, a commercial product has been developed and is being manufactured and sold. The commercial embodiment is exactly as described in Claims 26-37. In a grocery store sales test market of this new product, the sales have exceeded expectations and have proceeded at a pace more than double that of the sales of the competing, nationally-recognized brand of small bags of match-lightable charcoal. The product has also sold well in a hardware store test market. The product has received unsolicited praise from a veteran grocery store buyer. The test market sales have also drawn the attention of


other major retailers. These early sales indicators are extremely impressive and are indicative of consumer recognition of the non-obviousness of the present invention. They support the contentions of Applicant that the claimed invention is not obvious in view of the WO770 reference or any other reference.

For one or more of the foregoing reasons, Applicant submits that present application is in condition for allowance. Favorable action is requested hereon.

The Commissioner is hereby authorized to charge any deficiencies in payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 50-2127.

Respectfully submitted,

Date: August 2, 2005

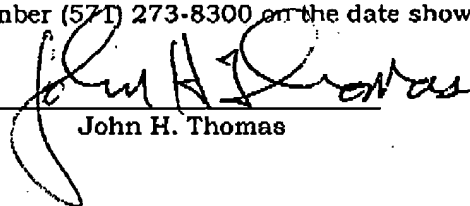
  
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to Examiner Toomer at the Patent and Trademark Office at facsimile number (571) 273-8300 on the date shown below.

Date: August 2, 2005

  
John H. Thomas